

SENATE BILL NO. 415

INTRODUCED BY TESTER, BERGREN, BIXBY, BLACK, BRUEGGEMAN, COBB, EATON, GALLUS,
GROESBECK, HANSEN, HARRINGTON, KITZENBERG, LARSON, LENHART, LIND, LINDEEN,
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WANZENRIED, WILLIAMS, WILSON, CALLAHAN

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA RENEWABLE POWER PRODUCTION
AND RURAL ECONOMIC DEVELOPMENT ACT; PROVIDING LEGISLATIVE FINDINGS; DEFINING TERMS;
PROVIDING A GRADUATED RENEWABLE ENERGY STANDARD; AUTHORIZING ADMINISTRATIVE
PENALTIES; PROVIDING A WAIVER PROCESS FOR PUBLIC UTILITIES ~~AND COMPETITIVE ELECTRICITY
SUPPLIERS~~; ESTABLISHING A PROCUREMENT PROCESS; AUTHORIZING ADVANCE APPROVAL OF
CERTAIN PROCUREMENT CONTRACTS BY THE PUBLIC SERVICE COMMISSION; REQUIRING THE
SUBMISSION OF PROCUREMENT PLANS; AUTHORIZING THE COMMISSION TO IMPLEMENT AND
ENFORCE THE PROVISIONS OF THIS ACT; PROVIDING THE COMMISSION WITH RULEMAKING
AUTHORITY; EXEMPTING COOPERATIVE UTILITIES FROM THE GRADUATED RENEWABLE ENERGY
STANDARD; REQUIRING CERTAIN COOPERATIVE UTILITIES TO IMPLEMENT AND ENFORCE THEIR
OWN RENEWABLE ENERGY STANDARD; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE ~~AND A
CONTINGENT VOIDNESS PROVISION.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 7 8] may be cited as the "Montana
Renewable Power Production and Rural Economic Development Act".

NEW SECTION. **Section 2. Findings.** The legislature finds that:

- (1) Montana is blessed with an abundance of diverse renewable energy resources;
- (2) renewable energy production promotes sustainable rural economic development by creating new
jobs and stimulating business and economic activity in local communities across Montana;
- (3) increased use of renewable energy will enhance Montana's energy self-sufficiency and

1 independence; and

2 (4) fuel diversity, economic, and environmental benefits from renewable energy production accrue to
3 the public at large, and therefore all consumers and utilities should support expanded development of these
4 resources to meet the state's electricity demand and stabilize electricity prices.

5
6 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 7 8], unless the context
7 requires otherwise, the following definitions apply:

8 ~~———— (1) "ANCILLARY SERVICES" MEANS SERVICES OR TARIFF PROVISIONS RELATED TO GENERATION AND DELIVERY~~
9 ~~OF ELECTRIC POWER OTHER THAN SIMPLE GENERATION, TRANSMISSION, OR DISTRIBUTION. ANCILLARY SERVICES RELATED~~
10 ~~TO TRANSMISSION SERVICES INCLUDE:~~

11 ~~———— (A) ENERGY LOSSES;~~

12 ~~———— (B) ENERGY IMBALANCES;~~

13 ~~———— (C) SCHEDULING AND DISPATCHING;~~

14 ~~———— (D) LOAD FOLLOWING;~~

15 ~~———— (E) SYSTEM PROTECTION; AND~~

16 ~~———— (F) REACTIVE POWER.~~

17 (1) "ANCILLARY SERVICES" MEANS SERVICES OR TARIFF PROVISIONS RELATED TO GENERATION AND DELIVERY
18 OF ELECTRIC POWER OTHER THAN SIMPLE GENERATION, TRANSMISSION, OR DISTRIBUTION. ANCILLARY SERVICES
19 RELATED TO TRANSMISSION SERVICES INCLUDE ENERGY LOSSES, ENERGY IMBALANCES, SCHEDULING AND DISPATCHING,
20 LOAD FOLLOWING, SYSTEM PROTECTION, AND REACTIVE POWER.

21 ~~(1)(2)(1)(2)~~ "Common ownership" means the same or substantially similar persons or entities that
22 maintain a controlling interest in more than one community renewable energy project even if the ownership
23 shares differ among the two community renewable energy projects. Two community renewable energy projects
24 may not be considered to be under common ownership simply because the same entity provided debt or equity
25 or both debt and equity to both projects.

26 ~~(2)(3)(2)(3)~~ "Community renewable energy project" means an eligible renewable resource that is
27 interconnected on either the customer or utility side of the meter in which local owners have a controlling interest
28 and that is less than or equal to 5 megawatts in total calculated nameplate capacity.

29 ~~(3)(4)(3)~~ "Competitive electricity supplier" means any person, corporation, or governmental entity that
30 is selling electricity to retail customers in the state of Montana and that is not a public utility or a cooperative

1 utility.

2 ~~(4)(5)(4)~~ "Compliance year" means each calendar year beginning January 1 and ending December 31,
3 starting in 2008, for which compliance with [sections 1 through 7 8] must be demonstrated.

4 ~~(5)(6)(5)~~ "Cooperative utility" means:

5 (a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

6 (b) an existing municipal electric utility as of May 2, 1997.

7 ~~(6)(7)(6)~~ "Eligible renewable resource" means a facility either located within Montana or delivering
8 electricity ~~on a real-time basis~~ from another state into Montana that commences commercial operation after
9 January 1, 2005, and that produces electricity from one or more of the following sources:

10 (a) wind;

11 (b) solar;

12 (c) geothermal;

13 (d) water power, in the case of a hydroelectric project ~~with a nameplate rating of 1 megawatt or less,~~
14 ~~or a hydroelectric project~~ that does not require a new appropriation, diversion, or impoundment of water and that
15 has a nameplate rating of 10 megawatts or less;

16 (e) landfill or farm-based methane gas;

17 (f) gas produced during the treatment of wastewater;

18 (g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic
19 fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been
20 treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic;

21 (h) hydrogen derived from any of the sources in this subsection ~~(6) (7) (6)~~ for use in fuel cells; AND

22 (i) the renewable energy fraction from the sources identified in subsections ~~(6)(a) through (6)(h) (7)(A)~~
23 ~~THROUGH (7)(H) (6)(A) THROUGH (6)(H)~~ of electricity production from a multiple-fuel process with fossil fuels; ~~and~~
24 ~~—— (j) the electricity production from eligible renewable resources interconnected on the customer side of~~
25 ~~the meter that can be tracked and verified by the commission and that are located in Montana.~~

26 ~~(7)(8)(7)~~ "Local owners" means:

27 (a) Montana residents or entities composed of Montana residents;

28 (b) Montana small businesses;

29 (c) Montana nonprofit organizations;

30 (d) Montana-based tribal councils;

(e) Montana political subdivisions or local governments;

(f) Montana-based cooperatives other than cooperative utilities; or

(g) any combination of the individuals or entities listed in subsections ~~(7)(a) through (7)(f)~~ ~~(8)(A) THROUGH (8)(F)~~ ~~(7)(A) THROUGH (7)(F)~~.

~~(8)(9)(8)~~ "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on ~~May 2, 1997~~ JANUARY 1, 2005, including the public utility's successors or assignees.

~~(9)(10)(9)~~ "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity generated by an eligible renewable resource that is tracked and verified by the commission and includes all of the environmental attributes associated with that 1 megawatt-hour unit of electricity production.

~~(10)(11)(10)~~ "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the community renewable energy project and other eligible renewable resources that are:

(a) located within 5 miles of the project;

(b) constructed within the same 12-month period; and

(c) under common ownership.

NEW SECTION. Section 4. Renewable resource standard -- administrative penalty -- waiver. (1)

Except as provided in subsection ~~(11)~~ ~~(12)~~ ~~(11)~~ AND [SECTION 7], a graduated renewable energy standard is established for public utilities ~~and competitive electricity suppliers~~ as provided in subsections (2) through (4).

(2) In each compliance year beginning January 1, 2008, through December 31, 2009, each public utility ~~and competitive electricity supplier~~ shall procure a minimum of 5% of its retail sales of electrical energy in Montana from eligible renewable resources.

(3) (a) In each compliance year beginning January 1, 2010, through December 31, 2014, each public utility ~~and competitive electricity supplier~~ shall procure a minimum of 10% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) As part of their compliance with subsection (3)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 50 megawatts in nameplate capacity.

(c) Public utilities shall proportionately allocate the purchase required under subsection (3)(b) based on each public utility's retail sales of electrical energy in Montana in the calendar year 2009.

(4) (a) In the compliance year beginning January 1, 2015, and in each succeeding compliance year,

each public utility ~~and competitive electricity supplier~~ shall procure a minimum of 15% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) (i) As part of their compliance with subsection (4)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 75 megawatts in nameplate capacity.

(ii) In meeting the standard in subsection (4)(b)(i), a public utility may include purchases made under subsection (3)(b).

(c) Public utilities shall proportionately allocate the purchase required under subsection (4)(b) based on each public utility's retail sales of electrical energy in Montana in the calendar year 2014.

~~———— (5) (A) EXCEPT AS PROVIDED IN SUBSECTIONS (5)(B) AND (5)(C), THE COST OF ELECTRICITY PROCURED FROM ELIGIBLE RENEWABLE RESOURCES, INCLUDING THE ASSOCIATED COST OF ANCILLARY SERVICES NECESSARY TO MANAGE THE TRANSMISSION GRID AND TO FIRM THE RESOURCE, MAY NOT EXCEED THE TOTAL ELECTRICITY SUPPLY COST, ADJUSTED FOR LINE LOSSES, INCURRED BY THE UTILITY, COMPETITIVE ELECTRICITY SUPPLIER, OR COOPERATIVE IN THE CALENDAR YEAR IMMEDIATELY PRECEDING THE ACQUISITION OF ELECTRICITY FROM AN ELIGIBLE RENEWABLE RESOURCE.~~

~~———— (B) A UTILITY OR COMPETITIVE ELECTRICITY SUPPLIER REGULATED BY THE COMMISSION MAY ACQUIRE ELECTRICITY PRODUCED FROM AN ELIGIBLE RENEWABLE RESOURCE THAT HAS A COST THAT EXCEEDS THE UTILITY'S OR THE COMPETITIVE ELECTRICITY SUPPLIER'S ELECTRIC SUPPLY PRICE UPON A FINDING BY THE COMMISSION THAT THE PRICE INCREASE TO THE CONSUMERS IS IN THE PUBLIC INTEREST.~~

~~———— (C) THE GOVERNING BOARD OF AN ELECTRIC COOPERATIVE MAY ACQUIRE ELECTRICITY PRODUCED FROM AN ELIGIBLE RENEWABLE RESOURCE THAT HAS A COST THAT EXCEEDS THE ELECTRIC COOPERATIVE'S ELECTRIC SUPPLY PRICE UPON A FINDING BY THE GOVERNING BOARD THAT THE PRICE INCREASE TO THE CONSUMERS IS IN THE PUBLIC INTEREST.~~

~~(5)(6)(5)~~ (a) In complying with the standards required under subsections (2) through (4), a public utility ~~or competitive electricity supplier~~ shall, for any given compliance year, calculate its procurement requirement based on the public utility's ~~or competitive electricity supplier's~~ previous year's sales of electrical energy to retail customers in Montana.

(b) The standard in subsections (2) through (4) must be calculated on a delivered-energy basis after accounting for any line losses.

~~(6)(7)(6)~~ A public utility ~~or a competitive electricity supplier~~ has until 3 months following the end of each compliance year to purchase renewable energy credits for that compliance year.

~~(7)(9)(7)~~ (a) In order to meet the standard established in subsections (2) through (4), a public utility ~~or competitive electricity supplier~~ may only use:

(i) electricity from an eligible renewable resource in which the associated renewable energy credits have not been sold separately;

(ii) renewable energy credits created by an eligible renewable resource purchased separately from the associated electricity; or

(iii) any combination of subsections ~~(7)(a)(i) and (7)(a)(ii)~~ ~~(8)(A)(i) AND (8)(A)(ii)~~ (7)(A)(i) AND (7)(A)(ii).

(b) A public utility ~~or competitive electricity supplier~~ may not resell renewable energy credits and count those sold credits against the public utility's ~~or competitive electricity supplier's~~ obligation to meet the standards established in subsections (2) through (4).

(c) Renewable energy credits sold through a voluntary service ~~option~~ SUCH AS THE ONE provided for in 69-8-210(4) may not be applied against a public utility's ~~or competitive electricity supplier's~~ obligation to meet the standards established in subsections (2) through (4).

~~(8)(9)(8)~~ Nothing in [sections 1 through 7 ~~8~~] limits a public utility ~~or a competitive electricity supplier~~ from exceeding the standards established in subsections (2) through (4).

~~(9)(10)(9)~~ If a public utility ~~or competitive electricity supplier~~ exceeds a standard established in subsections (2) through (4) in any compliance year, the public utility ~~or competitive electricity supplier~~ may carry forward the amount by which the standard was exceeded to comply with the standard in either or both of the 2 subsequent compliance years. The carryforward may not be double-counted.

~~(10)(11)(10)~~ Except as provided in subsection ~~(11)~~ ~~(12)~~ (11), if a public utility ~~or competitive electricity supplier~~ is unable to meet the standards established in subsections (2) through (4) in any compliance year, that public utility ~~or competitive electricity supplier~~ shall pay an administrative penalty, assessed by the commission, of ~~\$20~~ \$10 for each megawatt hour of renewable energy credits that the public utility ~~or competitive electricity supplier~~ failed to procure. A public utility may not recover this penalty in electricity rates. Money generated from these penalties must be deposited in the ~~general fund~~ UNIVERSAL LOW-INCOME ENERGY ASSISTANCE FUND ESTABLISHED IN 69-8-412(1)(A).

~~(11)(12)(11)~~ A public utility ~~or competitive electricity supplier~~ may petition the commission for a short-term waiver from full compliance with the standards in subsections (2) through (4) and the penalties levied under subsection ~~(10)~~ ~~(11)~~ (10). The petition must demonstrate that the:

(a) public utility ~~or competitive electricity supplier~~ has undertaken all reasonable steps to procure

renewable energy credits under long-term contract, but ~~that for reasons outside the control of the public utility or competitive electricity supplier~~, full compliance cannot be achieved AT A COST LESS THAN THE APPLICABLE COST CAPS DEVELOPED BY THE COMMISSION PURSUANT TO [SECTION 6(2)] EITHER BECAUSE RENEWABLE ENERGY CREDITS CANNOT BE PROCURED OR FOR OTHER LEGITIMATE REASONS THAT ARE OUTSIDE THE CONTROL OF THE PUBLIC UTILITY;

or

(b) integration of additional eligible renewable resources into the electrical grid will clearly and demonstrably jeopardize the reliability of the electrical system and that the public utility ~~or competitive electricity supplier~~ has undertaken all reasonable steps to mitigate the reliability concerns.

NEW SECTION. **Section 5. Procurement -- cost recovery -- reporting.** (1) In meeting the requirements of [sections 1 through 7 8], a public utility ~~and a competitive electricity supplier~~ shall:

(a) conduct renewable energy solicitations under which the public utility ~~or competitive electricity supplier~~ offers to purchase renewable energy credits, either with or without the associated electricity, under contracts of at least 10 years in duration; and

(b) consider the importance of geographically diverse rural economic development when procuring renewable energy credits.

(2) A public utility ~~or a competitive electricity supplier~~ that intends to enter into contracts of less than 10 years in duration shall demonstrate to the commission that these contracts will provide a lower long-term cost of meeting the standard established in [section 4].

(3) (A) CONTRACTS SIGNED FOR PROJECTS LOCATED IN MONTANA MUST REQUIRE ALL CONTRACTORS TO GIVE PREFERENCE TO THE EMPLOYMENT OF BONA FIDE MONTANA RESIDENTS, AS DEFINED IN 18-2-401, IN THE PERFORMANCE OF THE WORK ON THE PROJECTS IF THE MONTANA RESIDENTS HAVE SUBSTANTIALLY EQUAL QUALIFICATIONS TO THOSE OF NONRESIDENTS.

(B) CONTRACTS SIGNED FOR PROJECTS LOCATED IN MONTANA MUST REQUIRE ALL CONTRACTORS TO PAY THE STANDARD PREVAILING RATE OF WAGES FOR HEAVY CONSTRUCTION, AS PROVIDED IN 18-2-401(13)(A), DURING THE CONSTRUCTION PHASE OF THE PROJECT.

~~(3)~~(4) All contracts signed by a public utility to meet the requirements of [sections 1 through 7 8] are eligible for advanced approval under procedures established by the commission. Upon advanced approval by the commission, these contracts are eligible for cost recovery from ratepayers, except that nothing in [sections 1 through 7 8] limits the commission's ability to subsequently, in any future cost-recovery proceeding, inquire

into the manner in which the public utility has managed the contract and to disallow cost recovery if the contract was not reasonably administered.

~~(4)(5)~~ A public utility ~~and a competitive electricity supplier~~ shall submit renewable energy procurement plans to the commission in accordance with rules adopted by the commission. The plans must be submitted to the commission on or before:

(a) ~~June 1, 2006~~ JANUARY 1, 2007, for the standard required in [section 4(2)];

(b) June 1, 2008, for the standard required in [section 4(3)];

(c) June 1, 2013, for the standard required in [section 4(4)]; and

(d) any additional future dates as required by the commission.

~~(5)(6)~~ A public utility ~~and a competitive electricity supplier~~ shall submit annual reports, in a format to be determined by the commission, demonstrating compliance with [sections 1 through 7 8] for each compliance year. The reports must be filed by March 1 of the year following the compliance year.

NEW SECTION. Section 6. Commission authority -- rulemaking authority. (1) The commission has the authority to generally implement and enforce the provisions of [sections 1 through 7 8].

(2) The commission shall adopt rules before ~~January~~ JUNE 1, 2006, to:

(a) select a renewable energy credit tracking system to verify compliance with [sections 1 through 7 8];

(b) establish a system by which renewable resources become certified as eligible renewable resources;

(c) define the process by which waivers from full compliance with [sections 1 through 7 8] may be granted;

~~(d) ESTABLISH COST CAPS FOR PURCHASES UNDER [SECTION 4(2), (3)(A), (3)(B), (4)(A), AND (4)(B)];~~

~~(d)(E)(D)~~ establish procedures under which contracts for eligible renewable resources and renewable energy credits may receive advanced approval;

~~(e)(F)(E)~~ define the requirements governing renewable energy procurement plans and annual reports; and

~~(f)(G)(F)~~ generally implement and enforce the provisions of [sections 1 through 7 8].

NEW SECTION. SECTION 7. COST CAPS. (1) A PUBLIC UTILITY THAT HAS RESTRUCTURED PURSUANT TO TITLE 69, CHAPTER 8, IS NOT OBLIGATED TO TAKE ELECTRICITY FROM AN ELIGIBLE RENEWABLE RESOURCE UNLESS THE ELIGIBLE RENEWABLE RESOURCE HAS DEMONSTRATED THROUGH A COMPETITIVE BIDDING PROCESS THAT THE TOTAL COST OF

ELECTRICITY FROM THAT ELIGIBLE RESOURCE, INCLUDING THE ASSOCIATED COST OF ANCILLARY SERVICES NECESSARY TO MANAGE THE TRANSMISSION GRID AND FIRM THE RESOURCE, IS LESS THAN OR EQUAL TO BIDS FOR THE EQUIVALENT QUANTITY OF POWER OVER THE EQUIVALENT CONTRACT TERM FROM OTHER ELECTRICITY SUPPLIERS.

(2) A PUBLIC UTILITY THAT HAS NOT RESTRUCTURED PURSUANT TO TITLE 69, CHAPTER 8, IS NOT OBLIGATED TO TAKE ELECTRICITY FROM AN ELIGIBLE RENEWABLE RESOURCE UNLESS THE COST PER KILOWATT HOUR OF THE GENERATION FROM THE RENEWABLE RESOURCE DOES NOT EXCEED BY MORE THAN 15% THE COST OF POWER FROM ANY OTHER ALTERNATE GENERATING RESOURCE AVAILABLE TO THE PUBLIC UTILITY.

NEW SECTION. Section 8. Cooperative utility -- exemption -- standard. (1) A cooperative utility is exempt from the graduated renewable energy standard established in [section 4].

(2) Each governing body of a cooperative utility that has 5,000 or more customers is responsible for implementing and enforcing a renewable energy standard for that cooperative utility that recognizes the intent of the legislature to encourage new renewable energy production and rural economic development, while taking into consideration the effect of the standard on rates, reliability, and financial resources.

NEW SECTION. Section 9. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 10. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 11. Codification instruction. [Sections 1 through 7 8] are intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 7 8].

~~NEW SECTION. SECTION 11. CONTINGENT VOIDNESS. IF THE FEDERAL ENERGY PRODUCTION TAX CREDIT ENACTED IN PUBLIC LAW 102-486 EXPIRES, THEN [THIS ACT] IS VOID. THE DEPARTMENT OF REVENUE SHALL CERTIFY TO THE CODE COMMISSIONER THE DATE ON WHICH THE FEDERAL WIND ENERGY CREDIT HAS LAPSED.~~

NEW SECTION. Section 12. Effective date. [This act] is effective on passage and approval.

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